SERVICES AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO

AND

GARDA CL WEST, INC.

FOR ARMORED CAR PICKUP AND DEPOSIT SERVICE

SERVICES AGREEMENT

This Services Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Garda CL West, Inc. (Contractor).

RECITALS

City wishes to retain Contractor to provide armored car pickup of cash, coin and check deposits and deposit in City's account at Bank of America's cash vault as further described in the Scope of Services (Services), attached hereto as Exhibit A.

Contractor has the expertise, experience, and personnel necessary to provide the Services.

City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.

This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(e) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

ARTICLE I
CONTRACTOR SERVICES

1.1 Scope of Services. Contractor shall provide the Services to City as described in Exhibit A, Scope of Services, which is incorporated herein by reference.

1.2 Contract Administrator. The Office of the City Treasurer (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department (Project Coordinator) as follows:

Kent Morris
Chief Investment Officer
City of San Diego
Office of the City Treasurer
1200 Third Ave. Ste. 1624
San Diego, CA 92101
(619) 533-6257
kmorris@sandiego.gov

1.3 General Contract Terms and Provisions. This Agreement incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

1.4 Submittals Required with the Agreement. Contractor is required to submit all forms and information delineated in Exhibit B before the Agreement is executed.

ARTICLE II
DURATION OF AGREEMENT

2.1 Term. This Agreement shall be for a period of one year beginning April 26, 2019 through April 26, 2020. City may, in its sole discretion, extend this Contract for one (1) additional one (1) year period, upon the written mutual agreement of the City and Contractor. Unless otherwise terminated, this Agreement shall be effective until completion of the Scope of Services or April 26, 2020, whichever is earliest. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement and approved by the City Attorney in accordance with San Diego Charter Section 40.

ARTICLE III
COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Agreement in an amount not to exceed $360,000 or the amount referenced in the Purchase Order, as set forth Exhibit B, Pickup Locations and Pricing, which is incorporated herein by reference. The rates set forth in Exhibit B shall be adjusted in accordance with Exhibit C (**City's General Contract Terms and Provisions as Revised by the Parties**).

ARTICLE IV
WAGE REQUIREMENTS

By signing this Contract, Bidder certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

4.10 Living Wages. This Contract is subject to the City's Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each Bidder to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Bidder agrees to require all of its subcontractors, sub lessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

> **1. Exemption from Living Wage Ordinance.** Pursuant to SDMC section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.

4.11 Highest Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

ARTICLE V
CONTRACT DOCUMENTS

5.1 Contract Documents. This Agreement and its exhibits constitute the Contract Documents. The Contract Documents completely describes the goods and services to be provided. The Contract Documents include:

This Agreement
Scope of Services – Exhibit A
Pricing & Pick-up Schedule – Exhibit B
City's General Contract Terms and Provisions – Exhibit C

5.2 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by the City and Contractor acting by and through their authorized officers.

CONTRACTOR

BY:_____

3/25/19
DATE SIGNED

CITY OF SAN DIEGO
A Municipal Corporation

BY:_____

Print Name: Kristina Peralta

Director
Purchasing & Contracting Department

17 APR 2019
DATE SIGNED

Approved as to form this 23rd day of April, 2019.

MARA W. ELLIOTT, City Attorney

BY:_____
Deputy City Attorney

EXHIBIT A
SCOPE OF SERVICES

A. OVERVIEW

City wishes to retain Contractor to provide armored car pickup of regular cash, coin and check deposits from designated City facilities and coin-counting and depositing services for the City's Parking Meter program, for deposit in the City's account at Bank of America's cash vault.

The City requires armored transportation service from a skilled and reputable vendor possessing a strong record of safety and dependability, providing the City with reliable, responsive, high-quality service consistently throughout the contract term.

B. ADMINISTRATIVE REQUIREMENTS AND BILLING

1. Contractor agrees to provide the City, all labor, materials, and equipment, to perform all work required for the armored car pickup and delivery service.

2. The Contractor will provide armored car pick-up of City cash, coin, and check payments at each City location set forth in Exhibit B ("Pick-up Locations") ("Pick-up Service") and coin-counting and depositing services for the City's Parking Meter program.

3. In the event Contractor, despite its best efforts and due to unforeseen circumstances not within its control, is unable to provide Pick-up Service within the specified time frame, Contractor shall promptly notify the Project Coordinator by phone and email and Contractor shall arrange an alternative pickup time that is mutually agreed upon at no additional cost.

4. Contractor shall pick-up daily deposits no later than twenty (20) minutes after the location's designated deposit pick-up timeframe. If the Contractor's personnel arrive before the established pick-up timeframe, City personnel will make a best-effort without guarantee to have the deposit ready to accommodate the early pick-up.

5. Contractor shall attach supporting billing detail to each Invoice Statement whenever the Contractor uses a summary billing charge in a statement. Supporting billing statements shall detail the charges for services provided by individual City pick-up location.

6. Invoices shall be paid monthly in arrears within forty-five (45) days of receipt of the monthly Invoice Statement.

7. Contractor shall deliver, or make available online, the invoice as set forth in Section 5 above, to the Office of the City Treasurer located at 1200 Third Avenue, Suite 1624, San Diego, CA 92101, no later than fifteen (15) days following the end of the statement period.

8. Occasionally, the Contractor may be required to pick-up deposits from a Pick-up Location at an alternate time, at the request of City. Such Pick-up Service shall be charged at an off-day service rate provided in Exhibit B.

9. Contractor agrees to provide to City a written detailed description of its security process for Pick-up Service and Deposit Service and for identifying courier staff providing those services ("Security Process").

10. Professional misconduct by any Armored Transport driver/pick-up personnel will not be tolerated by the City. Contractor shall use commercially reasonable efforts to replace any Armored Transport driver/pick-up personnel upon the City's request.

11. Contractor agrees to carry liability insurance at all times in the amount of $30,000.00 (thirty thousand dollars and zero cents) per deposit. Should the deposit exceed this amount, City will cover the additional cost of excess liability insurance at the rates specified in Exhibit B.

C. CITYWIDE ARMORED TRANSPORT REQUIREMENTS

1. All deposits picked by Contractor will be delivered to the City's specified Cash Vault vendor (i.e. Loomis for Bank of America) for next business day deposit credit. The required pick-up schedule and addresses of City facilities requiring armored transport service are listed in Exhibit B. The City reserves the right to add or delete pick-up locations, and change pick-up frequency as mutually agreed upon by the City and Contractor. Contractor shall use its electronic handheld scanner to scan the bar code on the sealed container at the pickup location, and a City employee will sign the handheld scanner, acknowledging the exchange of custody of the deposit(s) and the deposit(s) amount.

2. Contractor shall deliver all coin/currency orders ("change orders"), accepted through Bank of America's change ordering system, to the specified City location on the next schedule service day for that City location if the order meets the Bank's cut-off deadlines. Contractor shall not provide any City location with a coin/currency order ("change order") without receiving the full amount due in cash from the respective City location and the City employee signs Contractor's electronic handheld device acknowledging the exchange of custody of the change order and the change order amount.

D. PARKING METER COIN COUNTING AND DEPOSITING REQUIREMENTS

The City of San Diego collects approximately $4,200,000 in coin annually from parking meters. In addition to accepting credit cards, the City's parking meters accept the insertion of nickels, dimes and quarters, half dollar, and whole dollar coins. Approximately 83% of the coins collected are quarters, 13% are dimes, and 4% are nickels. Coins other than nickels, dimes and quarters are often inserted and accepted by the parking meters, and represent less than 1% of the volume received (including pennies at approximately 0.5%).

Contractor will accommodate the City's current Parking Coin Counting process, as further specified below and provide a designated coin-counting facility located in the City of San Diego where City Parking Meter Operations personnel will have canisters weighed.

Contractor may provide City personnel access to the coin-counting facility as set forth in Section 2(d) below.

1. As reflected in the Pricing & Pick-Up Schedule (Exhibit B), the Contractor will provide the City with two Options for coin-counting and depositing services. Option 1: City employees will deliver full meter coin bins to Contractor's coin-counting facility, as further specified below. Option 2: Contractor will retrieve coin canisters from a secure central City of San Diego location to be designated by the City. City may elect either Option based on the Parking Meter Program's needs, which may change during the term of the contract term. Currently, the City utilizes Option 1 with Contractor.

2. City's Current Coin Counting and Delivery Process (Option 1)

    a. City Parking Meter employees use locked collection containers to collect coin from parking meters. Locked collection containers are delivered to the Contractor's designated coin-counting facility, where each container is weighed, and the gross canister weight is recorded.

    b. The City provides the Contractor with all the lockable collection containers. Typical lockable collection containers used are approximately 8"x 8"x16" and weigh approximately ten (10) pounds empty. Canister dimensions may vary however, as smaller collection canisters, spares, and taller collections canisters may sometimes be used.

    c. The City provides the Contractor with a set of collection container keys for unlocking the collection containers. In the event that keys are lost, the City provides replacement keys to the Contractor. City Parking Meter employees are not given access to or possession of any keys which unlock the collection canisters.

    d. City Parking Meter employees deliver coin-filled locked collection containers to be weighed at the Contractor's designated facility, between the hours of 8:00 a.m. to 4:00 p.m. PST, five (5) days a week (Monday through Friday, excluding Contractor holidays), or four (4) days a week in the event of a City holiday.

    e. Acceptance of Coin-Filled Locked Collection Containers

        i. City Parking Meter Employee Identification

            1. The City provides Contractor with the name, signature, vehicle make, vehicle identification number, and photograph of each City Parking Meter employee authorized by the City to deliver or pick up the locked collection containers referred to herein. The Contractor is responsible for checking government issued identification to verify that the City employee is authorized to make coin deliveries. The Contractor writes the name of the City employee on the deposit receipt as the canisters are being weighed.

ii. Canister Weighing Procedures

1. The City Parking Meter employee weighs the unopened coin-filled canisters collected at the Contractor's designated coin-counting facility, and completes all required information on the Parking Meter Canister Control Log (see example below).

CITY OF SAN DIEGO
TREASURER DEPARTMENT
REVENUE COLLECTIONS DIVISION

Distribution:
org. - Transportation Dept.
pink - Contractor

PARKING METER CANISTER CONTROL LOG

FOR THE WEEK OF: _____ THRU _____, 20 ____

CANISTER NUMBERS						TIME OUT	DATE ISSUED	ISSUED TO	TARE WEIGHT	TIME IN	DATE RECD.	ROUTE NO.	GROSS WEIGHT	NET WEIGHT	COLLECTOR SIGNATURE	CONTRACTOR SIGNATURE

2. The Contractor independently validates the canister weight recorded by the City Parking Meter employee. The Contractor weighs the contents of the coin-filled canisters collected, and records the gross canister weight on the City's Parking Meter Canister Control Log.
    a. Weight Variances: In the event that the canister weight measured by the Contractor differs from the weight documented by the City by more than one (1) pound, the Contractor immediately notes the corrected amount on the deposit receipt before moving forward with the acceptance process. A one (1) pound variance is currently acceptable.

3. Unlocked Containers: The Contractor currently accepts unlocked containers. The Contractor reports the unlocked containers to the Parking Meter Operations Supervisor or Senior Parking Meter Technician.

f. The Contractor provides the City Parking Meter employee with a signed receipt showing the number of collection containers received, and the gross container set weight.

g. Counting Procedures

i. The Contractor unlocks each of the coin-filled collection containers, counts the contents under dual custody (i.e. 1 Contractor employee under camera).

ii. The Contractor packages the counted coin in sealed tagged deposit bags containing pennies ($50), nickels ($200), dimes ($1,000), and quarters ($1,000).

iii. Mutilated and foreign coins are not counted, but are weighed for each collection day.

h. Recording and Reporting Procedures

i. On each collection/deposit day, the Contractor records the details of the coin collected on the Bulk Coin Final Report, which is sent electronically via email to City Parking Meter staff on the following business day.

i. Deposit Procedures

i. The packaged, sealed coin is delivered daily (Monday through Friday, excluding City holidays) by Contractor, to the City's primary Depository Bank's authorized coin vault provider.

3. Contractor Retrieval of Coin Canisters (Option 2)

a. City Parking Meter employees use locked collection containers to collect coin from parking meters. Contractor will retrieve coin canisters from a secure central City location during a 30-minute pick-up window that is mutually agreed upon by both parties at the rate and frequency set form in Exhibit B. City must have the canisters ready for pick-up at the time of Contractor's arrival.

b. Concurrently with the pick-up Service, Contractor will return empty canisters from the prior Service day.

c. The City provides the Contractor with all the lockable collection containers. Typical lockable collection containers used are approximately 8"x 8"x16" and weigh approximately ten (10) pounds empty. Canister dimensions may vary however, as smaller collection canisters, spares, and taller collections canisters may sometimes be used.

d. The City provides the Contractor with a set of collection container keys for unlocking the collection containers. In the event that keys are lost, the City provides replacement keys to the Contractor. City Parking Meter employees are not given access to or possession of any keys which unlock the collection canisters.

e. The Contractor provides the City Parking Meter employee with a signed receipt showing the number of collection containers received, and the gross container set weight.

f. Counting Procedures

    i. The Contractor unlocks each of the coin-filled collection containers, counts the contents under dual custody (i.e. 1 Contractor employee under camera).

    ii. The Contractor packages the counted coin in sealed tagged deposit bags containing pennies ($50), nickels ($200), dimes ($1,000), and quarters ($1,000).

    iii. Mutilated and foreign coins are not counted, but are weighed for each collection day.

g. Recording and Reporting Procedures

    i. On each collection/deposit day, the Contractor records the details of the coin collected on the Contractor's Bulk Coin Final Report, which is sent electronically via email to City Parking Meter staff on the following business day.

h. Deposit Procedures

    i. The packaged, sealed coin is delivered daily (Monday through Friday, excluding City holidays) by Contractor, to the City's primary Depository Bank's authorized coin vault provider.

Pricing & Pick-up Schedule – Exhibit B

LOCATION	LOCATION	PICKUP DAY (s)	PICK UP TIME	Per Stop Rate	Flat monthly cost	Comments
City Treasurer's Office	1200 Third Avenue, Suite 100 San Diego, CA 92101	Pick up: M, T, W, TH, F	2pm - 4:30pm	$27.00	$594.00	No holiday pick up
City of San Diego Parking Administration	202 C Street San Diego, CA 92101	Pick up: M, T, W, TH, F	N/A	$21.00	$462.00	No holiday pick up
Torrey Pines Golf Course	11480 N. Torrey Pines Rd. La Jolla, CA 92037	Pick up: M, T, W, TH, F	11 a.m. to 4:00 p.m.	$21.00	$641.00	No holiday pick up
Balboa Golf	2600 Golf Course Dr. San Diego, CA 92102	Pick up: SU M, T, W, TH, F, S	Before noon	$21.00	$641.00	No holiday pick up
Miramar Landfill	5180 Convoy St San Diego, CA 92111	Pick up: M, T, W, TH, F, S	2pm - 5pm	$32.00	$976.00	Require holiday pickup except on Christmas, Thanksgiving, New Years and Easter.
City Library	330 Park Blvd. San Diego, CA 92102	Pick up: M, T, W, TH, F	10 a.m. to 11 a.m.	$27.00	$594.00	No holiday pick up
Water Utilities Dept	1110 6th Ave. San Diego, CA 92101	Pick up: M, T, W, TH, F	3:00 p.m. to 4 p.m.	$27.00	$594.00	No holiday pick up
Police Headquarters	1401 Broadway Lobby San Diego, CA 92101	Pick up: M	10 a.m. - 2pm	$29.00	$126.09	No holiday pick up
Mission Bay Golf Course	2702 N. Mission Bay Dr. San Diego, CA 92109	Pick up: SU M, T, W, TH, F, S	N/A	$21.00	$641.00	No holiday pick up
Lakes Program (San VicenteReservoir)	2375 Moreno Ave. Lakeside, CA 92040	T, W, F	10 a.m - 2 p.m.	$28.00	$364.00	No holiday pick up
Parking Coin Counting	202 C Street San Diego, CA 92101	Pick up: M,T,W,TH,F	30 minute pick-up window	N/A	$9,211.00	**Meter Coin Canister Consolidation - Option 2** Garda will retrieve coin canisters from a secure central City of San Diego location Pickup will occur during a 30 minute pick-up window to be mutually agreed upon by the City and Garda; Garda will return empty canisters from day prior Garda will count coin and consolidate into Fed standard bags Garda will deliver Fed standard bags to Local CCV *Pricing assumes that all full canisters will be ready for p/u no later than 12pm

THE CITY OF SAN DIEGO

GENERAL CONTRACT TERMS AND PROVISIONS

APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS*

***AS REVISED BY THE PARTIES**

ARTICLE I
SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II
CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III
COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Reserved.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's

subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV
SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of

documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within thirty (30) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. Each party's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the party may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V
ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must notify the Project Coordinator, as defined in section 1.2 of the Service Agreement, if there is, or it is anticipated that there will be a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Contractor shall provide notification to the City's Project Coordinator by phone and email no later than 12:00 pm Pacific Time of the scheduled pickup. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or

services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Reserved.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall make records available electronically. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Reserved.

5.13 Reserved.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees have passed Contractor's personnel screening standards and consistent with state law. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions. Contractor shall provide City written notice of changes to its background screening standards.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI
RESERVED.
ARTICLE VII
INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all third party claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), and expense (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent that they arise out of the performance of services under this Contract by Contractor, any subcontractor, anyone employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than $1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to inspect complete, certified copies of all required insurance policies, including endorsements required by these specifications. Contractor shall make certified copies of all required insurance

policies available at reasonable locations within City or County of San Diego during normal business hours. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII
RESERVED

ARTICLE IX
CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's

agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management

Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X
CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI
DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though

City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII
MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII
MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval, which shall not be unreasonably withheld. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or

providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole

responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.